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BOARD OF SUPERVISORS

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September 15, 2004

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

**APPROVAL OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CENTERS FOR MEDICARE AND MEDICAID SERVICES AND THE COUNTY  
OF LOS ANGELES (Second District) (3 Votes)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and delegate authority to the Director of Health Services, or his designee, to execute a Memorandum of Understanding between the Centers for Medicare and Medicaid Services and the County of Los Angeles related to King/Drew Medical Center for a term effective upon execution through September 30, 2005.
2. Instruct the Department of Health Services to take the steps necessary to relinquish King/Drew Medical Center's trauma designation, including noticing of the requisite Beilenson Hearing.

#### PURPOSE OF RECOMMENDED ACTIONS/JUSTIFICATION:

Approval of this Memorandum of Understanding between the Centers for Medicare and Medicaid Services (CMS) and the County of Los Angeles will provide the Department of Health Services (DHS) the opportunity to establish a sustained effort over the next 12 months to continue restructuring the clinical operations at King/Drew Medical Center (KDMC).

Additionally, approval of these recommendations will allow the Department to move forward with steps to decompress the volume of critically-ill patients at the hospital by relinquishing KDMC's trauma designation.

#### FISCAL IMPACT/FINANCING:

Although the specific fiscal impact associated with the action on the trauma service at KDMC has not yet been determined, there will be a need to allocate additional funds to both private hospitals and DHS facilities to offset the cost of caring for additional trauma patients. The Department is presently conducting this analysis and it will be completed within the next 30 days.

#### FACTS AND PROVISIONS/LEGAL REQUIREMENTS:

In December 2003, the Department assigned a team of senior managers to take over day-to-day management of the hospital and develop and implement structural and operational reforms to its operations. Progress has been made in many areas, such as instituting a clear management structure, implementing and monitoring new practices and protocols related to patient care, assessing and strengthening the skills competency of nursing staff, improving management of human resources activities, initiating improved billing and revenue management practices, and restructuring plant management operations. In their recent reviews of the hospital, both CMS and the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) have recognized and commented on the forward movement by the hospital.

These improvements notwithstanding, however, KDMC is far from "fixed". The hospital continues to experience clinical problems even as changes are implemented. Despite consistently noting the progress that has occurred, both CMS and JCAHO have made clear their concern about the sustainability of the Department's efforts and its capacity to continue moving forward to ensure a stable, safe clinical environment throughout the hospital at all times.

To address concerns over the long-term sustainability of these reforms, CMS has proposed entering into a Memorandum of Understanding (MOU) with the County that would include a number of additional elements to support DHS' efforts.

Additionally, in order to stabilize the hospital and ensure a safe patient environment at the hospital, immediate steps must be taken to limit the flow of critically-ill patients into the hospital. For this reason, the Department is recommending relinquishing KDMC's trauma designation.

### *Memorandum of Understanding*

The Department must continue and build upon the efforts that already have been initiated to restructure operations. The proposed MOU with CMS provides the time and support to accomplish this goal.

The term of the MOU is from execution through September 30, 2005. Under this agreement, KDMC will be required to submit a revised Plan of Correction by September 22. If accepted by CMS, the facility would be subject to a focused resurvey to ensure compliance with the corrections outlined in the Plan of Correction and to make certain that no conditions exist that would lead to the immediate jeopardy of patients at the hospital. Upon CMS' determination that the hospital has passed the resurvey, the termination action would be redrawn. In the event KDMC fails, it would be terminated from the Medicare program effective October 29, 2004, thereby losing both federal Medicare and Medicaid funding, estimated at approximately \$200 million annual, or half of the facility's revenue.

Under the MOU, the Department would be required to engage an independent consultant with an expertise in hospital management to evaluate, assess, and monitor all operations and systems at the facility and provide comprehensive recommendations during the period of the MOU. The engagement of a consultant will provide the opportunity to establish a sustained effort over the next 12 months, as well as the infusion of experts in a broad range of areas of particular importance, such as clinical resource allocation, physician organization and competency assessment, clinical productivity measurement, and organizational structure and effectiveness. As mentioned above, this will provide a number of additional needed hospital specialists, as well as relieve staff from across DHS who have been increasingly drawn away from their regular responsibilities to support the KDMC restructuring effort.

Specifically, the consultant or outside management company would be responsible for:

- Assuming operational management of the Medical Center, under the supervision and direction of the Department.

- Continuously monitoring all major hospital systems on site, including reviewing, studying, monitoring, and reporting on all of the high priority concerns identified in the CMS Statement of Deficiencies.
- Making recommendations concerning all of the changes to KDMC's structure that it determines necessary to ensure consistent operations that produce dependable, safe, and high quality health care service throughout the hospital and advising and assisting in the implementation of recommendations adopted by the Department.
- Evaluating the governance, leadership, and competency of staff, including medical staff, nursing staff, and all health care professionals, proposing recommendations for improvement, and advising and assisting in the implementation of recommendations adopted by the Department.
- Evaluating labor-management issues, proposing recommendations to address such issues, and advising and assisting KDMC in hiring and retaining competent professional staff.
- Assessing operating procedures and operating systems, allocation of resources, recommending reforms, and advising and assisting in the implementation of recommendations adopted by the Department.
- Proposing recommendations to reduce emergency room diversion rates and generally improve capacity to provide appropriate access to care and delivery of quality care to the community and advising and assisting in the implementation of recommendations adopted by the Department.

The consultant also will be required to provide an initial written report that clearly describes the areas that require corrective action and provides a comprehensive plan to address each issue with anticipated timeframes for completing the remediation. The consultant's reports, including the action plan and any updates, would be provided directly by the consultant not only to your Board and the Director of Health Services, but to CMS and the State Department of Health Services and, to the extent legally permissible, to the general public, as well. KDMC also would provide to CMS its responses to both the Joint Commission on the Accreditation of Healthcare Organizations' survey and issues related to a recent communicable disease investigation at the hospital. KDMC also would agree to participate in certain quality measurement activities endorsed by CMS.

Finally, the Department would agree, under the MOU, to accept as valid all the findings of the June 3, 2004 survey and would waive its right to administratively or judicially challenge those findings.



### *Relinquishment of Trauma Designation*

KDMC presently treats approximately 47,000 emergency room and 2,100 trauma patients annually. The majority of the hospital's admissions come through either the emergency or trauma departments. This tremendous inflow of patients, many of which require high acuity care, results in stresses across the hospital, which range from the inability to provide nursing staff for sufficient ICU and telemetry beds to overwhelmed pharmacy, laboratory, and other ancillary services.

The Department is recommending that KDMC relinquish its trauma designation. Within 90 days, DHS will phase out the trauma program at KDMC and shift the transport of patients to other trauma hospitals.

Trauma patients are the most critically ill and injured individuals cared for by the hospital. These patients also put significant demand on the supporting clinical services. Elimination of the trauma program would reduce the dependence on other clinical programs, such as surgery, orthopedics, and radiology – some of which are experiencing operational problems. Additionally, the regulatory requirements as to clinical coverage for an emergency room are substantially less stringent than those for trauma hospitals. Such a move also would allow the Department to substantially reduce the stress on other clinical services, such as neurosurgery, cardiothoracic surgery, and general and orthopedic surgery. These also are areas in which the resident training programs have either been terminated by the accrediting agency or are in serious trouble. Additionally, the hospital continues to experience difficulty ensuring sufficient physician coverage in many of the clinical areas that are mandated for hospitals with trauma designation.

While this would increase patient volume at surrounding trauma hospitals, it would retain emergency and inpatient and outpatient capacity at KDMC and would remove much of the strain presently experienced by the hospital. The Department's goal is to ensure that the trauma volume from KDMC is reallocated among the other hospitals in a manner that does not negatively impact availability or quality of care to trauma patients. The following steps will be taken to affect this:

- Adjust affected hospitals' trauma contracts to reflect increased volume
- Redraw trauma boundaries to reflect reallocated trauma caseload
- Submit revised trauma plan to the State
- Establish paramedic protocols to manage patient transports
- Educate local fire departments/ambulance companies to redrawn boundaries
- Evaluate other hospitals that may be interested in joining the trauma network

With regard to emergency services, a number of steps have been taken over the past nine months to divert patients from the hospital's emergency room in order to decompress its census. It is of great priority to the Department to increase the efficacy and efficiency of the emergency room at KDMC. Thus, one of the specific requirements for the consultant to be hired under the MOU with CMS will be to propose and assist in the implementation of recommendations to reduce KDMC's emergency room diversion rate and generally improve the hospital's capacity to provide appropriate access to quality emergency care.

CONTRACT PROCESS:

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS):

Approval of both the MOU with CMS will provide additional time in which to implement structural and operational reforms at King/Drew Medical Center. The relinquishment of the hospital's trauma designation will allow DHS to decompress the number of critically ill patients arriving for treatment at the hospital and thus stabilize the hospital and ensure a safe patient environment.

Very truly yours,

Thomas L. Garthwaite, MD  
Director and Chief Medical Officer

TLG:ak

c: Chief Administrative Officer  
County Counsel  
Executive Officer, Board of Supervisors

Attachment

**MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding ("MOU") between the Centers for Medicare & Medicaid Services ("CMS"), a division of the United States Department of Health and Human Services ("DHHS"), and the County of Los Angeles, on behalf of Martin Luther King, Jr./Charles R. Drew Medical Center, Los Angeles, California ("the Medical Center") is being executed and will be implemented to further the objectives

of Titles XVIII and XIX of the Social Security Act and to facilitate the delivery of quality hospital services to the community served by the Medical Center. Accordingly, the parties hereto agree as follows:

1. The term of this MOU shall be from the date of execution by all parties through September 30, 2005.
2. The Medical Center accepts as valid, and without qualification, the findings of the Medicare validation survey, conducted at the facility on June 3, 2004, as set forth in detail on the Statements of Deficiencies (Form CMS-2567) ("SODs"), provided to the Medical Center by CMS under cover of letter dated July 13, 2004. The Medical Center waives all rights to administratively or judicially challenge in any forum and for any purpose the legal or factual validity of the findings set forth on the above-referenced Statements of Deficiencies. Further, Medical Center shall not file or submit any action or suit against the United States, DHHS, CMS (including its officers, employees, and agents), the California Department of Health Services ("DHS"), or any other component of the Federal or California State Government in any administrative or judicial forum with respect to any matter in any way related to the June 3, 2004 survey or any other surveys conducted by or on behalf of CMS during the period of this MOU.
3. A true and accurate copy of each of the SODs for the aforementioned June 3, 2004 Medicare validation survey is contained in Appendix A hereto and incorporated herein as part of the MOU.
4. CMS has duly notified the Medical Center of CMS's determination that the deficiencies cited on the SODs substantially limit the Medical Center's capacity to render adequate care to its patients and/or adversely affect patient health and safety, and that, on this basis, the Medical Center's agreement to participate as a provider of services in the Medicare program is scheduled to be terminated by CMS on October 29, 2004.
5. No later than September 22, 2004 the Medical Center shall prepare and submit for review by CMS the following:
  - A comprehensive written plan for correcting all deficiencies cited on the above-referenced SODs. Such plan shall, at a minimum: (a) explain the procedures for implementing corrective measures addressing each deficiency; (b) specify a date by which full correction will be achieved; (c) describe the monitoring processes to be implemented to ensure that the corrections are permanent; (d) identify, by position, the Medical Center personnel responsible for implementing each element of the plan; and (e) identify, by position, Medical Center personnel responsible for monitoring implementation.
  - In addition the plan shall provide that the Medical Center will, no later than October 19, 2004, and subject to prior approval by CMS, enter into a written agreement with a qualified, independent consultant (hereinafter, "the Contractor") with expertise in hospital management and quality improvement, and success in assisting hospitals requiring major systemic change and restructuring. To this end, the agreement shall require the Contractor to:
    - Report directly to the Director of the Los Angeles County Department of Health Services, or his designee (collectively, "the Director").
    - Assume operational management of the Medical Center, under the supervision and direction of the Director and to the extent permissible by law.
    - Continuously monitor all major hospital systems on site. The Contractor shall be required to review, study, monitor and report on all of the high priority concerns included in the SODs and referenced in other sections of this MOU. The Contractor shall make recommendations concerning all of the changes to the Medical Center's structure that the Contractor determines to be necessary to ensure consistent operations that produce dependable, safe and high quality health care service throughout the Medical Center and advise and assist in implementing those recommendations adopted by the Director.



- Evaluate governance, leadership, and competency of staff, including medical staff, nursing staff and all healthcare professionals and propose recommendations for improvement. The Contractor shall advise and assist in implementing those recommendations adopted by the Director.
- Evaluate labor-management issues and propose recommendations to address such issues. The Contractor shall advise and assist the Medical Center in hiring and retaining competent professional staff.
- Assess operating procedures and operating systems, allocation of resources and recommend reforms. The Contractor shall advise and assist in implementing those recommendations adopted by the Director.
- Advise and propose recommendations to reduce the Medical Center's emergency room diversion rates and generally improve the Medical Center's capacity to provide appropriate access to care, and to deliver quality care to the community. The Contractor shall advise and assist in implementing those recommendations adopted by the Director.
- Within sixty (60) days of the date the contract between the Medical Center and the Contractor is fully executed, issue an initial written report clearly describing areas of concern and proposing a comprehensive plan for addressing each such concern, including anticipated time frames for completing remediation. Thereafter, throughout the term of the agreement between the Medical Center and the Contractor, the Contractor shall issue periodic reports at intervals not to exceed sixty (60) days, describing and evaluating all remedial actions taken by the Medical Center and proposing additions and other amendments to the Contractor's initial comprehensive plan.
- Promptly deliver unredacted copies of all reports to the Medical Center's Governing Body, the Director, CMS, and DHS. Subject to State and Federal privacy requirements, all such reports will also be made available to the public.

· Any written response of the Medical Center to any issue identified by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") in connection with the surveys conducted by the JCAHO from April-August 2004. Contained in Appendix B, incorporated herein as part of the MOU.

· The Medical Center's comprehensive written response to the communicable disease investigation of the facility conducted by Los Angeles County in February 2004. Contained in Appendix C, incorporated herein as part of the MOU.

6. If all of the items described in numbered paragraph 5 are timely received by CMS **and** CMS – in its sole discretion which shall not be exercised in an arbitrary and capricious manner – determines that the Medical Center's plan of correction is acceptable, CMS will authorize its agent, DHS to conduct an onsite Medicare certification resurvey of the Medical Center prior to the currently scheduled termination date, i.e., October 29, 2004. If these items are not timely received or if the plan of correction is deemed by CMS to be unacceptable, termination of the Medicare provider agreement will take effect at 12:01 a.m. on October 29, 2004 or as soon thereafter as is consistent with the regulatory notice requirements at 42 C.F.R. § 489.53(c).

7. If a resurvey as described in numbered paragraph 6 is conducted prior to October 29, 2004 and (1) such resurvey (a) verifies effective implementation of the plan of correction; and (b) finds no deficiencies in Compliance with Medicare Conditions of Participation which pose a threat of immediate jeopardy to patient health or safety; and (2) CMS finds that the hospital has demonstrated the ability to achieve and maintain compliance with all applicable standards of care and to fully implement the elements of the plan of correction described by numbered paragraph five (5) above, CMS shall rescind the October 29, 2004 termination. Notwithstanding the findings of this or any survey or resurvey of the facility, the Medical Center will remain at all times subject to full review by CMS and/or its duly authorized agent and to all legally prescribed enforcement actions.

8. The Medical Center will participate in all quality measurement activities undertaken by or requested/endorsed by CMS. CMS shall notify Medical Center in writing of the exact nature of each of the activities in which Medical Center is required to participate.

9. Notwithstanding any provision of this MOU or any document generated pursuant to the MOU, CMS retains full legal authority and responsibility to determine compliance with Medicare participation requirements and, consequently, may survey, or authorize its agents to survey, the Medical Center to determine compliance with such requirements and to take all legally available enforcement action including, but not limited to, termination of the Medical Center's Medicare provider agreement at any time, subject to all legal procedural requirements. In particular, the Medical Center will not be deemed in compliance with Medicare requirements based on JCAHO accreditation until such time as "deemed status" may be expressly restored in writing by CMS.

10. The Medical Center shall remain solely responsible for achieving and maintaining compliance with all applicable Medicare requirements and may not transfer either this responsibility or its administrative authority to the Contractor or any other third party.

11. CMS is not responsible for providing either the Medical Center or the Contractor with technical advice or otherwise assisting the Medical Center in meeting the Medical Center's obligations under its Medicare provider agreement to any greater extent than it would provide to any other hospital.

12. The undertakings in the MOU have no bearing as to the status of the Medical Center's California State hospital license. Notwithstanding any provision of the MOU, loss of such license will result in the immediate termination of the Medical Center's Medicare provider agreement.

13. This MOU constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, both written and oral, with respect to the subject matter of the MOU. Any modifications must be set forth in writing and signed by both parties.

14. Any ambiguity in the MOU shall be resolved to bring the MOU into conformity with all relevant provisions of the Social Security Act and implementing federal regulations.

15. This MOU creates no private right of action, and does not waive the sovereign immunity of CMS, DHHS, or their officers, employees, and agents.

16. Each party shall bear its own costs associated with the implementation of the MOU. In particular, the Medical Center shall be solely responsible for all payments due the Contractor under the agreement prescribed by numbered paragraph 5 herein, and neither CMS, DHHS, nor any agency of the Federal government is a guarantor of such payment or assumes any liability whatsoever under such agreement.

17. The terms of this MOU shall be binding on the parties hereto, including their successors, transferees, administrators, heirs, executors, designees, assigns, agents and contractors.

18. Each person executing the MOU in a representative capacity on behalf of either party warrants that he or she is duly authorized to do so and to bind the party he or she represents to the terms and conditions of the MOU.

THE FOREGOING PROVISIONS OF THIS MEMORANDUM OF UNDERSTANDING ARE HEREBY  
AGREED TO ON THE DATE (S) INSCRIBED BELOW

Each Supervisor  
September 13, 2004  
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**For Martin Luther King, Jr./Charles R. Drew Medical Center :**

Date: By  
[Insert name and title]

(Having been duly authorized to enter into this MOU on  
behalf of the Medical Center, as evidenced by the attached  
action of the Los Angeles County Board  
of Supervisors (Appendix D)

**For the Centers for Medicare & Medicaid Services**

Date: By  
[Insert name and title]

Attachments: Appendix A - Statements of Deficiencies (2)  
Appendix B – Response to JCAHO surveys from April-August 2004  
Appendix C – Record of the February 2004 Communicable Disease Investigation  
Appendix D - Action by the Los Angeles County Board of Supervisors